



IN THE MATTER OF:

Complainant,

and

EUCID, INC.,

Respondent.

Charge No.: 2002CA1278

EEOC No.: 21BA20561

ALS No.: 12026

RECOMMENDED ORDER AND DECISION

On March 10, 2003, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Margaret Masar. That complaint alleged that Respondent, Eucid, Inc., discriminated against Complainant on the basis of her age when it discharged her.

Respondent never filed a verified answer in this matter. In addition, nobody claiming to represent Respondent has ever appeared at a scheduled status hearing. Even after being served with Complainant's Motion to Default, Respondent failed to appear. Accordingly, an order was entered finding Respondent in default.

A hearing on damages was held on July 24, 2003. Despite being served with notice of that hearing, Respondent did not appear. After the damages hearing had concluded, Complainant filed a petition for attorney's fees. No response to that petition has been received. The matter is ready for decision.

FINDINGS OF FACT

The following findings of fact were derived from the record file in this case and from the evidence presented at the damages hearing.

1. Respondent, Eucid, Inc., hired Complainant, Margaret Masar, on or about January 29, 2001.

2. Complainant's date of birth was February 28, 1959.
3. Complainant's position with Respondent was Chief Marketing Officer. In that position, she was part of the company's four-member executive management team.
4. In her position with Respondent, Complainant was to be paid a base salary of \$180,000.00. In addition, she was to receive bonuses of \$18,000.00 per quarter, or \$72,000.00 per year.
5. On or about October 29, 2001, Respondent discharged Complainant.
6. Several days prior to Complainant's discharge, Respondent hired a similarly situated younger employee.
7. During Complainant's tenure with the company, Respondent paid her medical insurance premiums. After her discharge, Complainant had to pay \$182.12 per month for medical insurance coverage.
8. Since her discharge, Complainant has been unable to find full-time employment. She has earned approximately \$6,000.00 doing consulting work.
9. Complainant does not seek reinstatement to her former position.
10. Respondent was no longer in operation as of the date of the damages hearing.
11. Complainant is seeking compensation for the work of attorney Gary D. Ashman at the rate of \$295.00 per hour for 36.15 hours.
12. The requested hourly rate is reasonable and should be accepted. The number of hours is unreasonably high and should be reduced to 35.15 hours.
13. Complainant is seeking reimbursement for \$12.15 in costs incurred in the prosecution of this matter. The requested costs are not compensable.

CONCLUSIONS OF LAW

1. As a result of the default entered against Respondent, there are no liability issues to address.

2. Complainant waived her right to reinstatement.

DISCUSSION

The complaint in this matter was filed on March 10, 2003. Respondent never appeared for scheduled status hearings or took any other action to defend itself in this action. Therefore, on June 3, 2003, Respondent was found to be in default.

As a result of the default order, Respondent is deemed to have admitted the allegations of the complaint. ***Bielecki and Illinois Family Planning Council***, 40 Ill. HRC Rep. 109 (1988). Accordingly, a finding of liability against Respondent is appropriate. The only remaining issues involve Complainant's damages.

Respondent hired Complainant on or about January 29, 2001. Her position was Chief Marketing Officer. She was discharged on or about October 29, 2001.

A prevailing complainant is presumed to be entitled to reinstatement to the job lost due to unlawful discrimination. However, at the damages hearing, Complainant explicitly stated that she does not want to return to work with Respondent. Therefore, reinstatement is not recommended.

Nonetheless, Complainant is entitled to an award of backpay. At the time of her discharge, Complainant was earning a base salary of \$180,000.00. In addition, she was to receive bonuses of \$18,000.00 per quarter, or \$72,000.00 per year.

The damages hearing was held on July 24, 2003. That date was one year, thirty-eight weeks and two days after the discharge. For the first year, her backpay would be \$180,000.00. Complainant's annual salary breaks down to \$3,461.54 per week, so the subsequent thirty-eight weeks would add up to \$131,538.52. The two-day period would be (assuming a five day work week) 40% of her weekly pay, or \$1,384.62. Adding those three figures makes a total of \$312,923.14. Six quarters of unpaid bonuses would equal \$108,000.00. Adding that amount to the other backpay figure results in a total of \$420,923.14. Respondent is, of course, entitled to

a set-off for the amount of Complainant's interim earnings. She earned approximately \$6,000.00 doing consulting work. Deducting that from the earlier total leaves \$414,923.14. That amount is the recommended net backpay award.

Complainant requested an award of more than thirty years of front pay, covering her until age seventy-five. That request should be denied. There is absolutely no precedent in this forum for a front pay award of such scope. Moreover, Complainant stated at the damages hearing that Respondent is no longer in business. That being the case, it is clear that she would not still be working for Respondent, even in the absence of the company's age discrimination against her. Under these circumstances, an award of front pay would be an enormous windfall for Complainant. As a result, no such award is recommended.

Complainant should be awarded her out of pocket insurance costs. While she worked for Respondent, the company paid for her health insurance. After the discharge, she had to pay \$182.12 per month. Her monthly payment multiplied by the twenty-one months between the discharge and the damages hearing amounts to \$3,824.52.

It is appropriate to award prejudgment interest on the amounts above. Because of the delay in her receipt of the money owed to her, such interest is necessary to make Complainant whole.

There are two other types of relief which were not specifically requested, but which are appropriate in this situation. If such records still exist, Respondent should be ordered to clear Complainant's personnel records of any reference to this action or to the underlying charge. In addition, Respondent should be ordered to cease and desist from further unlawful discrimination on the basis of age.

Finally, Complainant is entitled to an award of her reasonable attorney's fees and costs. Complainant's fee petition requests compensation for 36.15 hours of work at the rate of \$295.00 per hour. Because of its failure to file any response to the fee petition, Respondent

has waived the issue of attorney's fees. **Mazzamuro and Titan Security**, ___ Ill. HRC Rep. ___, (1989CN3464, October 21, 1991).

Complainant's attorney has been licensed since 1976 and is very experienced in the field of employment discrimination law. Therefore, the requested hourly rate is reasonable and should be accepted. However, it is necessary to make one specific cut in the requested number of hours. Such cuts are appropriate, even in a waiver situation, when a fee petition requests payment for hours which clearly are not compensable. See **White and County of Winnebago/Animal Services Dep't**, ___ Ill. HRC Rep. ___, (1989CA0450, April 28, 1992).

The fee petition requests compensation for one hour on November 16, 2001. That hour is not compensable. The explanation of the time states "[Clerk] filing of Charges, IDHR and EEOC." Attorneys should not be compensated for doing basic clerical work. **Altes and Illinois Dep't of Employment Security**, 50 Ill. HRC Rep. 3 (1989). The remaining 35.15 hours of requested time appear reasonable and should be accepted. At the requested hourly rate, that time justifies an attorney's fee award of \$10,369.25.

Complainant's requested costs should not be reimbursed. The only listed cost item is for eighty-one photocopies. Generally, copies are considered part of a law firm's overhead. See **Kaiser and MEPC American Properties, Inc.**, 164 Ill. App. 3d 978, 518 N.E.2d 424 (1st Dist. 1987). As a result, in the absence of specific documentation that Complainant's attorney routinely charges his clients for such expenses, it is recommended that Complainant not be awarded the requested costs.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

- A. That Respondent pay to Complainant the sum of \$414,923.14 for lost backpay;
- B. That Respondent pay to Complainant the sum of \$3,824.52 as reimbursement

for health insurance premiums paid out of pocket by Complainant;

C. That Respondent pay to Complainant prejudgment interest on the awards in paragraphs A and B, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;

D. That Respondent pay to Complainant the sum of \$10,369.25 for attorney's fees reasonably incurred in the prosecution of this matter;

E. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

F. That Respondent cease and desist from further unlawful discrimination on the basis of age.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: January 9, 2004